

## **A Few Words About Public Libraries and MPAA ratings**

By Lance M. Werner

Movie ratings from the Motion Picture Association of America (MPAA) generate some concerns among my friends working in Michigan's public libraries. I occasionally get questions from the field about the legality and public expectation of libraries to prohibit minors from circulating movies with PG, PG-13, R and NC-17 ratings.

### **MPAA Ratings**

The MPAA is a private organization whose activities are not governed by any state or federal law. Movie ratings are offered as a service to MPAA members through the MPAA administered Classification and Ratings Administration (CRA). It is CRA that assigns a particular rating to a movie as a guide to viewers of age appropriateness. Filmmakers that wish their film to be rated submit their film voluntarily to CRA for review and movie rating assignment.

### **A Question of Authority**

The entire topic of whether libraries are obligated to comport their circulation practices for minors in accordance with MPAA ratings rests on the question of legal authority. I have repeated one fundamental legal premise time and again regarding library authority. This premise is as governmental entities, library boards, employees and agents have no inherent powers. They possess only those limited powers given them by the state constitution or by state statute or powers that are necessarily implied from there. *Hanselman v Kileen*, 419 Mich 168, 351 NW2d 544 (1984). Translation: library boards, directors, staff and volunteers can only do something if there is a law that says they can do that thing.

Determining the legal authority to act is important for two primary reasons in relation to this question.

The first reason is as follows...the question of ratings often boils down to whether something is considered obscene or harmful to minors (both categories of speech are not constitutionally protected). What is notable is that the authority to make the determination of whether or not something is obscene or harmful to minors rests solely with a court. Neither library boards, employees or agents, nor the MPAA, can make the decision because there is no legal authority to do so. The MPAA rating is, and has been intended only as, a guide and never as a legal mandate.

The second reason that authority is fundamental to this question is that although Michigan's public libraries must adhere to section 6 of the Michigan Library Privacy Act, 1984 PA 455, MCL 397.606, which requires libraries to take steps to prevent minors from accessing obscene or sexually explicit harmful material that is harmful to minors on the Internet, it does not authorize libraries to restrict minors access to other library materials. In fact, because there is no legal authority that enables libraries to restrict

minor's access to library materials that fall outside of the purview of section 6, restricting materials could conceivably be considered an infringement of minor's constitutional rights.

### **Conclusion**

Let me be clear, I am not advocating furnishing minors with materials that are rated PG-13, R or NC –17. I think that circulation of these materials should be administered in accordance with parental expectations, by the parent, not by the library. Although there may be some public expectation that Michigan's public libraries should act *in loco parentis* with respect to restricting minor's access to movies that have been rated PG –13, R, and NC – 17, there is no legal authority to do so.

If you have any questions please contact the Library of Michigan Library Law Specialist at (517) 373 – 1299.